

I. PLEADINGS

1. Plaintiffs John Lunetta and Jerry McLaughlin (“Plaintiffs”) allege that in addition to the property Chenega transferred pursuant to the Alaska Native Claims Settlement Act (“ANCSA”) to Plaintiffs’ predecessors in interest, they are also entitled to an easement that runs from Plaintiffs’ properties over Chenega land to the village of Chenega Bay. [See Plaintiffs’ Complaint (“Complaint”), ¶¶ 9-28, attached as Exhibit A] Specifically, Plaintiffs assert claims for (a) an implied easement and/or (b) an easement by necessity. [Exh. A at ¶¶ 19-28]

2. Plaintiffs filed their Complaint on or about October 15, 2015. Plaintiffs served Chenega with a copy of the Complaint on or about October 21, 2015. [See Exh. A]

II. REMOVAL IS PROPER IN THIS CASE

A. Removal is Timely

3. Removal is timely, pursuant to 28 U.S.C. § 1446(b), because Chenega has removed the case within 30 days of Plaintiffs serving it with the Summons and Complaint. [See *supra* ¶ 2]

B. Federal Question Jurisdiction Exits

4. Chenega is a village corporation organized pursuant to the Alaska Native Claims Settlement Act. [Exh. A at ¶ 5] In 1979, pursuant to ANCSA, the federal government conveyed to Chenega the land that now comprises the Village of Chenega Bay. [Id. at ¶ 9] Then, in 1997, pursuant to § 1613(c)(1) of ANCSA, Chenega re-conveyed two tracts of this land to the Plaintiffs’ predecessors in interest. [Id. at ¶ 15] No easements were recorded in Chenega’s re-conveyance. The Complaint asserts along with conveyance

of the two parcels now owned by Plaintiffs, that Chenega was effectively required to also convey easement rights from the two parcels over Chenega's ANCSA lands to the village of Chenega Bay.

5. Federal question jurisdiction exists for two independent reasons.

6. First, ANCSA completely preempts Alaska state law causes of action to create adverse property interests, including easements, over undeveloped land conveyed to Native Corporations under ANCSA.¹ Chenega's property that Plaintiffs assert an easement over in their Complaint is undeveloped land conveyed to Chenega under ANCSA. [*Id.* at ¶ 9]

7. Second, federal jurisdiction exists under the *Smith* doctrine. Under *Smith v. Kansas City Title & Trust Co.*,² a case arises under the laws of the United States when a plaintiff's right to relief under state law necessarily requires resolution of a substantial question of federal law in dispute between the parties.³

8. Plaintiffs' Complaint alleges state law easement claims. [*Id.* at ¶¶ 19-28] However, in order for Plaintiffs to prevail on those claims, the Court will first have to

¹ 43 U.S.C. § 1636(d)(1)(A)(i); see *Sound Development, Inc. v. Sherstone, Inc.*, 1994 WL 230560, *3 (D. Alaska Mar. 23, 1994) (noting that "[a]s to adverse possession, subsection 1636(d)(1)(A)(i) would appear (although the court does not so rule) to preempt or bar even the assertion of such a claim as to undeveloped land.").

² *Smith v. Kansas City Title & Trust Co.*, 255 U.S. 180 (1921).

³ See *id.* at 199; *Grable & Sons Metal Products, Inc. v. Darue Engineering and Manufacturing*, 545 U.S. 308, 314-16 (2005); *Sparta Surgical Corp. v. National Assn. of Securities Dealers*, 159 F.3d 1209, 1212 (9th Cir. 1998); *Cook Inlet Region, Inc. v. Rude*, 690 F.3d 1127, 1130 (9th Cir. 2009); *Massachusetts v. Wampanoag Tribe of Gay Head*, 36 F. Supp. 3d 229, 233 (D. Mass. 2014).

resolve substantial questions about ANCSA. First, the Court will have to rule that state law may expand the scope of a village corporation re-conveyance under ANCSA⁴ beyond the property interests actually transferred on the deed and beyond any requirement of ANCSA. Second, the Court would need to rule that ANCSA⁵ does not completely preempt state law causes of action that would create adverse property interests over undeveloped ANCSA lands. Finally, the Court would have to rule that ANCSA's one-year statute of limitations to challenges of a village corporation's re-conveyance⁶ does not apply to Plaintiffs' claims.

9. Because Plaintiffs' state law causes of action are completely preempted by ANCSA and Plaintiffs' right to relief under state law requires resolution of substantial questions under ANCSA in dispute between the parties, federal question jurisdiction is satisfied, and this case is properly removable by Chenega.

C. Venue and Other Requirements Are Satisfied

10. Venue of this removal is proper under 28 U.S.C. § 1391 because this Court is in the United States District Court for the district corresponding to the place where the state court action was pending.

11. Pursuant to Local Electronic Filing Administrative Policies and Procedures and 28 U.S.C. § 1446(a), a copy of the Complaint is attached as Exhibit A. Chenega will file the remaining state court filings when it receives the Minute Order from Chambers.

⁴ 43 U.S.C. § 1613(c)(1).

⁵ 43 U.S.C. § 1636(d)(1)(A)(i).

⁶ 43 U.S.C. § 1632(b).

12. Pursuant to 28 U.S.C. § 1446(d), Chenega is filing a written notice of this Removal with the Clerk of the Superior Court for the State of Alaska, Third Judicial District at Anchorage. A Notice of Removal to Adverse Party, together with copies of this Notice of Removal and the Notice of Filing of Notice of Removal to Clerk of the Superior Court for the State of Alaska, Third Judicial District at Anchorage, are also being served upon Plaintiffs' counsel as required by 28 U.S.C. § 1446(d).

WHEREFORE, Chenega, pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, respectfully removes the action now pending against it in the Superior Court for the State of Alaska, Third Judicial District at Anchorage to this Honorable Court, and requests this Court retain jurisdiction for all further proceedings.

Respectfully submitted this 10th day of November, 2015.

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NOTICE OF REMOVAL
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CERTIFICATE OF SERVICE

I certify that on November 10, 2015, a copy of the foregoing *Notice of Removal* was mailed, by first-class mail, postage prepaid and properly addressed, to the following:

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